

JUDGE CIRELL

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Harvey Pearl,

Plaintiff,

v.

North American Power And Gas LLC,

Defendant.

Civil Action No.: **13 CV 2143**

COMPLAINT

For this Complaint, the Plaintiff, Miguel Pineda, by undersigned counsel, states as follows:

JURISDICTION

1. This action arises out of Defendant's repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* (the "TCPA").
2. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367.
3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that Defendant transact business here, Plaintiff resides in this judicial district, and a substantial portion of the acts giving rise to this action occurred here.

PARTIES

4. The Plaintiff, Harvey Pearl (hereafter "Plaintiff"), is an adult individual residing in White Plains, New York, and is a "person" as defined by 47 U.S.C. § 153(10).
5. Defendant, North American Power And Gas LLC ("NAPG"), is a Connecticut business entity with an address of Twenty Glover Avenue, Norwalk, Connecticut 06851.

FACTS

6. In December 2012, NAPG began placing up to three calls a day to Plaintiff's residential telephone.

7. At all times referenced herein, NAPG placed calls to Plaintiff's residential telephone by using an automated telephone dialer system ("ATDS") and/or by using an artificial or prerecorded voice.

8. When Plaintiff answered the calls from NAPG, he heard a prerecorded message delivered by NAPG. The prerecorded message offered Plaintiff to switch his gas provider.

9. Plaintiff never provided his residential telephone number to NAPG and never provided his consent to NAPG to be contacted on his residential telephone.

10. During conversations with NAPG, Plaintiff informed NAPG that he was not interested in its services and requested that NAPG remove his number from its database.

11. Despite being instructed by Plaintiff not to call, NES thereafter continued to place calls to Plaintiff's residential telephone.

12. The calls from Defendant to Plaintiff were not placed for "emergency purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(i).

COUNT I
VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT – 47
U.S.C. § 227, et. seq.

13. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

14. Without prior consent the Defendant made telephone calls to the Plaintiff's residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the Plaintiff in violation of 47 U.S.C. § 227(b)(1)(B).

15. NAPG placed calls to Plaintiff's residential telephone using prerecorded voice knowing that it lacked consent to call his number. As such, each call placed to Plaintiff was made in knowing and/or willful violation of the TCPA, and subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).

16. As a result of each call made in negligent violation of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages for each call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

17. As a result of each call made in knowing and/or willful violation of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that judgment be entered against the Defendant:

- A. Statutory damages of \$500.00 for each violation determined to be negligent pursuant to 47 U.S.C. § 227(b)(3)(B);
- B. Treble damages for each violation determined to be willful and/or knowing pursuant to 47 U.S.C. § 227(b)(3)(C);
- C. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: March 28, 2013

Respectfully submitted,

By 

Sergei Lemberg (SL 6331)

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